APPEAL NO. 021067
FILED JUNE 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 3, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first through fifth quarters. The claimant appeals the determinations as to the first, second, third, and fifth quarters, asserting that the hearing officer incorrectly found that she had some ability to work. The respondent (self-insured) urges affirmance.

DECISION

Affirmed.

We first note that the case file contains a three-page letter from the claimant's treating doctor, Dr. S. The letter is dated April 22, 2002, subsequent to the date of the CCH, and was received by the Texas Workers' Compensation Commission's Chief Clerk of Proceedings on May 6, 2002. The letter was not attached to the claimant's pro se appeal, and there is no indication that the claimant is even aware that Dr. S wrote the letter, or otherwise authorized the release of the medical information contained in the letter. Further, there is no indication that Dr. S served this letter on the self-insured, and the self-insured's response to the claimant's appeal (received on May 21, 2002) makes no mention of the letter. Dr. S did not sign the letter "on behalf of the claimant," nor was he a party at the CCH, and there is no evidence, nor any allegation, that he is a subclaimant pursuant to Section 409.009. We will disregard the letter from Dr. S.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the first, second, third, and fifth quarters. The requirements for entitlement to SIBs are provided for in Sections 408.142 and 408.143. S*ee also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant contends that she had "no ability" to work during the qualifying periods, July 24, 2000, through April 22, 2001, for the first through third quarters, and July 23 through October 21, 2001, for the fifth quarter. She contended that for the first three quarters, the reports of Dr. S satisfy the requirement of Rule 130.102(d)(4) for a narrative report from a doctor which specifically explains how the injury causes a total inability to work and that there is no other record which shows that she is able to return to work. The hearing officer found that the reports of Dr. S are not credible to establish or explain a total inability to work during the qualifying periods and that the report of Dr. L and the functional capacity evaluation (FCE) performed on July 11, 2001,[1] are other records which indicate that the claimant was able to work at a sedentary level. The hearing officer found that during the fifth quarter qualifying period, the claimant attended a computer-training course sponsored by the Texas Rehabilitation Commission (TRC), on a full-time basis. The evidence, however, does not support this finding, as the fifth quarter qualifying period ended on

[1] The FCE's first page is erroneously dated June 11, 2001.

October 21, 2001, and the evidence (Claimant's Exhibit No. 18, page 3) established that the TRC did not determine that the claimant was eligible for services until October 26, 2001, after the qualifying period had ended. This erroneous finding does not affect the ultimate result, however, as the hearing officer correctly noted that the claimant had not established that she was entitled to SIBs for the first through fourth quarters. Because the claimant was not entitled to SIBs for 12 consecutive months under Section 408.146(c), she ceased to be entitled to additional income benefits and, therefore, the hearing officer made the correct determination concerning entitlement to fifth quarter SIBs. We do, however, reverse Finding of Fact No. 4 because it is against the great weight and preponderance of the evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Michael B. McShane
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Thomas A. Knapp
Appeals Judge